

STATE OF CALIFORNIA  
Energy Resources Conservation  
and Development Commission

**DOCKET**

**07-AFC-6**

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**In the Matter of:**

**The Application for Certification for the  
CARLSBAD ENERGY CENTER  
PROJECT**

**Docket No. 07-AFC-6**

**APPLICANT'S RESPONSE TO CITY OF CARLSBAD'S LETTER REQUEST TO  
REOPEN PROCEEDINGS AND CONSIDER NEW INFORMATION FROM THE  
CALIFORNIA INDEPENDENT SERVICE [sic] OPERATOR**

April 11, 2012

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**STATE OF CALIFORNIA**  
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**I. BACKGROUND**

On March 28, 2012, the Committee assigned to the Carlsbad Energy Center Project ("CECP") published the Revised Presiding Member's Proposed Decision ("RPMPD"). Within two hours of the notification of release of the RPMPD, the City of Carlsbad and the City of Carlsbad as successor agency to the former Carlsbad Redevelopment Agency ("City") filed a Letter Request to Reopen Proceedings and Consider New Information from the California Independent Service [sic] Operator ("Letter Request"). Applicant Carlsbad Energy Center LLC ("Applicant") herein responds to and opposes the City's Letter Request.<sup>1</sup>

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<sup>1</sup> Although the Letter Request is entitled "Request to Reopen Proceedings," the Letter Request does not actually request the Committee to take any action. The Letter Request simply informs the Committee that the City may file a motion seeking relief based on the City's characterization that the reports and analysis that the CAISO "used to reach its conclusion in the CECP proceeding contain a significant error" and CAISO's revised analysis "may have 'broad impacts' on their assessments and conclusions." (Letter Request at 1.) Further, the City cites no evidence to support such statements.

## II. ARGUMENT

### A. The City's Letter Request Seeks to Unnecessarily Delay the CECP Proceedings

The City's Letter Request is a direct attempt by the City to undermine the override analysis in the RPMPD; however, even if the Letter Request is taken at face value, it fails to offer an effective and successful basis for questioning the validity of the override analysis.

Public Resources Code section 25525, which sets out the requirements for an override, provides:

The commission shall not certify any facility when it finds...that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability.

(Pub. Res. Code § 25525.) Hence, section 25525 directs the Commission to determine two things: whether a project is required for “public convenience and necessity” and whether there are not “more prudent and feasible means of achieving such public convenience and necessity.” The City's Letter Request specifically focuses on the “necessity” component of section 25525.

Regardless of the contents of the Letter Request (discussed in more detail in Part II.B, *infra*), the CECP evidentiary record is replete with information supporting the “necessity” of the CECP as required by section 25525. (*See, e.g.*, Exh. 199G at pp. 23-25; Applicant's Post-Evidentiary Hearing Reply Brief (Oct. 11, 2010) at pp. 31-33; 12/12/11 Transcript pp. 78: 4-12; 78:20-79:21; 148:1-15; Applicant's Post-Hearing Brief (Jan. 10, 2012) at pp. 6-7.) Moreover, in previous licensing proceedings, the CEC has determined that it “is inescapable that electrical

energy is essential to the functioning of contemporary society” and since the project “will provide a portion of the electrical energy supply essential to the well-being of the state's citizens and its economy,” the CEC has concluded that the project is required for public convenience and necessity. (Metcalf (99-AFC-3) Final Decision at p. 464; *see also* ESPR (00-AFC-14) Final Decision at p. 297.) Further, the RPMPD outlines various project benefits (RPMPD at 9-3 – 9-5), makes various Findings of Fact (which include a list of project benefits), and makes various Conclusions of Law, all of which demonstrate that the requirements for an override are met. (RPMPD at p. 9-9 – 9-11.)

The comprehensive environmental analysis conducted for CECP and the information gathered throughout this proceeding provides this Committee with the relevant information needed to support the RPMPD’s conclusion that the CECP meets the “public convenience and necessity” prong of section 25525.

**B. The City’s Letter Request is Speculative**

The City’s statements in the Letter Request are purely speculative. The City’s Letter Request relies heavily on a March 21, 2012 conference call in a California Public Utilities Commission (“PUC”) proceeding wherein the CAISO previously provided testimony. The City acknowledges, however, that the “testimony submitted by the ISO in the Energy Commission’s CECP proceeding was not discussed on the March 21, 2012 conference call.” The City then concludes, without citing any evidence, that “there is a high likelihood that the testimony submitted by the ISO in the CECP proceeding may also be in error and the revised analysis may have ‘broad impacts’ on their assessment and conclusion.”

To date, neither any party nor the CAISO have provided any information in the CECP proceeding that renders the CAISO’s previously submitted written and/or oral testimony in the

CECP proceeding invalid. Further, no additional studies or reports have been made part of the CECP evidentiary record that supplant the basis for the previously provided testimony of the CAISO.

The City acknowledges that testimony in the CECP proceeding was not discussed during the March 21, 2012 telephone conference. Due to the speculative nature of the City's statements, it is possible that any additional analysis undertaken by the CAISO might have no impact on the testimony provided in the CECP proceeding. Regardless, there is always uncertainty in the system planning process, as noted in the RPMPD:

The electricity system has a lot of moving parts--consumers (load), power plants (generation), and a complicated system of power lines and switches (transmission) connecting generation to load. The City and other opponents and even Commission staff characterize the present state of the evidence as not entirely certain as to the actual amount of generation that will ultimately be required. The opponents ask that we withhold a decision until there is more certainty about the need for CECP's generation. Staff, while acknowledging the uncertainty, recommends that we go forward and approve the project so that it is ready to go forward if and when the need for its services is confirmed.

We find it prudent to go forward at this time. The projections now available indicate that additional generation is necessary in the San Diego region and the Encina subarea. The nature of the system planning is that there will always be some degree of uncertainty, to which producers and consumers will adjust. Approving the project will set in motion the planning for the removal and redevelopment of Encina. It is more prudent to reuse this existing site, releasing a substantial portion for development for other purposes, than to cause similar capacity to be created elsewhere.

(RPMPD at p. 9-8.)

Based on the foregoing and contrary to the City's suggestion, the Committee should not indefinitely hold open the RPMPD comment period.

#### **C. Closure of the CECP Proceedings Allows for Finality of Proceeding**

The City's continued requests to supplement the record with new information or to keep

the record open to a date uncertain is precisely why agencies close evidentiary records and only reopen the same upon showing of good cause. “The point of closing the record to receipt of additional evidence is presumably to bring order to the decision making process, enabling permit issuers to manage dockets efficiently and to bring finality to permit proceedings.” (*Appeal of Columbia Gulf Transmission Company* (July 3, 1990), United States Environmental Protection Agency, PSD Appeal No. 88-11, at pp. 4-5.) The City’s Letter Request discusses recent testimony and reports in another proceeding as well as reports and additional testimony that does not yet exist – speculative evidence at best that, had a final decision been published months ago, would still have no bearing on the proceeding. Such information cannot be considered as part of the CECP evidentiary record because proceedings before the CPUC occur daily. If the Commission were to consider new information continuously brought before the CPUC, or any other agency for that matter, no developer would receive the applicable permits to begin development of any project because the evidentiary record would never close.

Moreover, if the Commission allows a party or intervenor to reopen proceedings or indefinitely prolong a comment period each time an agency issues a report that discusses a topic related to a particular project or each time testimony is presented to an agency in the State of California, the Commission will never be able to close the evidentiary record and will invite endless requests similar to the City’s Letter Request through and potentially including the day the Commission issues a final decision. Closure of the evidentiary record is critical to reaching finality on CECP’s siting process.

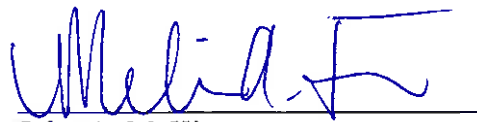
### **III. CONCLUSION**

The City’s Letter Request is yet another attempt by the City to delay and derail approval of the CECP. For the reasons set forth herein, the Committee must opine that the CAISO’s

written and oral testimony of December 12, 2011 remain part of the CECP record and that the RPMPD comment period will close on April 27, 2012. Applicant looks forward to the RPMPD hearing on April 19, 2012 and the conclusion of the CECP AFC proceedings. The comprehensive environmental analysis conducted for CECP and the information gathered throughout this proceeding provides this Committee with the relevant data needed to allow the full Commission to make a favorable decision for the Applicant, the citizens of the community surrounding the Project, and the citizens of the State of California.

Date: April 11, 2012

Stoel Rives LLP

A handwritten signature in blue ink, appearing to read 'John A. McKinsey', is written over a horizontal line.

John A. McKinsey

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CARLSBAD ENERGY CENTER LLC



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**APPLICATION FOR CERTIFICATION  
FOR THE CARLSBAD ENERGY  
CENTER PROJECT**

**Docket No. 07-AFC-6  
PROOF OF SERVICE**  
(Revised 3/27/2012)

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**DECLARATION OF SERVICE**

I, Judith M. Warmuth, declare that on April 11, 2012, I served and filed a copy of the attached:

**APPLICANT'S RESPONSE TO CITY OF CARLSBAD'S LETTER REQUEST TO REOPEN PROCEEDINGS AND CONSIDER NEW INFORMATION FROM THE CALIFORNIA INDEPENDENT SERVICE [sic] OPERATOR**

This document is accompanied by the most recent Proof of Service list, located on the web page for this project at:  
[www.energy.ca.gov/sitingcases/carlsbad/index.html](http://www.energy.ca.gov/sitingcases/carlsbad/index.html).

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**(Check all that Apply)**

**For service to all other parties:**

- ☒ Served electronically to all e-mail addresses on the Proof of Service list;
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**CALIFORNIA ENERGY COMMISSION – DOCKET UNIT**  
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**OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:**

- ☐ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission Michael  
J. Levy, Chief Counsel 1516 Ninth Street  
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

  
\_\_\_\_\_  
JUDITH M. WARMUTH